August 30, 2018

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Ex Parte Presentation, *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment,* WT Docket No. 17-79; *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment,* WC Docket No. 17-84; *Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Siting Policies*, WT Docket No. 16-421

Dear Ms. Dortch:

The record in these proceedings demonstrates that wireless providers continue to face long delays in securing local approval for deploying network facilities. Although some states and municipalities have taken actions to create a more favorable environment for deployment, many delays continue to exist.[1] Despite the shot clocks the Commission adopted that were intended to streamline action, providers report that they have had to wait many months and sometimes years for action by a locality on a siting request.

[1] *See, e.g.*, Letter from Henry Hultquist, AT&T, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, WC Docket No. 17-84, at 1 (filed Aug. 10, 2018) ("AT&T Letter") ("Unfortunately, many municipalities are unable, unwilling, or do not make it a priority to act on applications within the shot clock period."); Letter from Keith Buell, Sprint, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 1-2 (filed Aug. 13, 2018) ("Sprint Letter"); Letter from Katherine R. Saunders, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (filed June 21, 2018) ("[L]ocal permitting delays continue to stymie deployments."); Letter from Kenneth J. Simon, Crown Castle, to Marlene H. Dortch, FCC, WT Docket No. 17-79, WT Docket No. 16-421 (filed Aug. 10, 2018) ("Crown Castle Letter").

Long review periods and delays frustrate deployment. Worse, some localities have imposed "pre-application" requirements that must be satisfied before the locality will accept individual site applications—and have taken the position that the shot clocks do not apply to those mandatory pre-application requirements, undermining the purpose of the shot clocks. Put simply, the status quo in many localities is antithetical to the national priority to accelerate the deployment of broadband. These delays warrant three discrete but equally important actions.

- *First*, CTIA asks that the Commission set the shot clocks at 60 days for all collocations on or modifications of existing facilities and 90 days for all new facilities. Such action will eliminate the current disparity between procedures that apply to different types of "non-substantial" modifications, and reflect localities' increased experience in reviewing all facility applications and account for the reality that wireless deployment is increasingly relying on small cells, which localities can and should review and approve far more quickly.[2]
- *Second*, CTIA requests that the Commission clarify that these 60- and 90-day timelines apply to the entire review process required by the locality, including all mandatory pre-application licensing agreements or other requirements.[3]
- *Third*, to promote the effectiveness of the shot clocks, the Commission should rule that, where an application is not acted on by the end of these time periods, it is deemed granted.

These actions will recognize the need to accelerate the deployment of facilities that are essential to meeting the public's rapidly increasing reliance on broadband services and facilitate 5G deployment, and will help ensure that the shot clocks achieve the Commission's goal of streamlining wireless deployment to the benefit of the economy, businesses, and consumers.[4]

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[2] Comments of CTIA, WT Docket No. 17-79, WC Docket No. 17-84, at 11-13 (filed June 15, 2017) ("CTIA Comments"); Reply Comments of CTIA, WT Docket No. 17-79, WC Docket No. 17-84, at 4-6 (filed July 17, 2017) ("CTIA Reply Comments").

[3] CTIA Comments at 15; CTIA Reply Comments at 9-10.

[4] CTIA and other parties have demonstrated the numerous barriers to deployment of next-generation wireless infrastructure that exist today and the need for the Commission to expeditiously update its federal framework for state reviews. We note a number of states have recently taken steps to modernize their processes to promote deployment in their communities. CTIA applauds those efforts to proactively adopt innovative infrastructure policies that will advance our nation's 5G leadership. Importantly, the Commission is considering

The Shot Clocks Should Be Shortened and Harmonized. As providers create capacity for their existing networks and look ahead to 5G, they are increasingly seeking to deploy small cells. The attributes of small cells should allow localities to process siting applications faster, at most in a few weeks. Moreover, localities have had decades of experience in developing and applying policies for acting on applications for cell towers and other macro facilities – experience that should enable them to act quickly on all applications. For these reasons, the existing 90-day and 150-day shot clocks that apply outside of Section 6409 of the Spectrum Act are much longer than reasonable to process wireless facility applications.[5] However, data in the record[6] in these proceedings show that processing continues to take many months or longer.[7] For example:

- According to one provider, 70 percent of its small wireless facilities applications exceeded the 90-day shot clock and 47 percent exceeded the 150-day shot clock for new towers; another provider reported that almost 50 jurisdictions that it worked with exceeded the 150-day shot clock.[8]

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reforms focused on the same impediments, namely cost structure and timelines that are poor fits for next-generation markets. We welcome any proposals from those communities related to the future application of those policies without undermining the Commission's rightful objective for a workable national framework.

[5] Comments of T-Mobile USA, Inc., WT Docket No. 17-79, WC Docket No. 17-84, at 20 (filed June 15, 2017).

[6] Delays cited in this letter were identified in comments and reply comments filed in March and April 2017 in WT Docket Nos. 16-421, and in comments and reply comments filed in June and July 2017 in WT Docket No. 17-79 and/or WC Docket No. 17-84.

[7] Comments of T-Mobile USA, Inc., WT Docket No. 16-421, at 6 (filed Mar. 8, 2017) ("T-Mobile PN Comments"); Reply Comments of T-Mobile USA, Inc., WT Docket No. 16-421, at 6-7 (filed Apr. 7, 2017) ("T-Mobile PN Replies"); Mobilitie Comments, WT Docket No. 16-421, at 14-15 (filed Mar. 8, 2017) ("Mobilitie PN Comments") (stating that 340 jurisdictions have taken over six months to establish a process or agreement for access to the right of way – measured from the time a template process or draft agreement was first exchanged); Comments of Wireless Infrastructure Association, WT Docket No. 16-421, at 5-6 (filed Mar. 8, 2017) ("WIA PN Comments"); Comments of Verizon, WT Docket No. 16-421, at 7-8, Appendix A (filed Mar. 8, 2017) ("Verizon PN Comments"); Reply Comments of CTIA, WT Docket No. 16-421, at 9 (filed Apr. 7, 2017); ExteNet Comments, WT Docket No. 16-421, at 5-6, 11-15 (filed Mar. 8, 2017) ("ExteNet PN Comments"); Comments of Crown Castle International Corp., WT Docket No. 16-421, at 21 (filed Mar. 8, 2017) ("Crown Castle PN Comments"); CTIA Comments at 7-8.

[8] T-Mobile PN Replies at 7; WIA PN Comments at 5.

- One provider reported a small wireless facilities application that was pending with a New Jersey township for nearly a year; other providers reported small wireless facilities applications that were pending in municipalities in New Hampshire and Maine for more than two years, and three years in five other jurisdictions.[9]
- Localities in New York and Washington have required special use permits involving multiple layers of approval to locate small cells in some or all zoning districts.[10]
- Another New York locality subjected a provider to a process that consumed more than one and a half years to review its proposal to serve areas of historically poor service, and ultimately denied the request. The provider filed a lawsuit, which remains pending.[11]
- Two Pennsylvania jurisdictions refused for more than a year to approve a provider's request to modify existing facilities; the provider was forced to file suit to compel the jurisdictions to act.[12]
- The "protracted and costly" process one California county imposes, which takes a year or more, has deterred broadband deployment in that county.[13]

Shortening the shot clocks to 60 and 90 days for collocations and new facilities, respectively, and harmonizing them with the period that currently applies to non-substantial modifications of wireless facilities under Section 1.40001(c) of the rules, is well supported by the record.[14] Moreover, setting a shorter period for collocation on an existing structure (whether or not

[9] WIA PN Comments at 6.

[10] Comments of Verizon, WT Docket No. 17-79, at 35 (filed June 15, 2017) ("Verizon Comments").

[11] Crown Castle Letter at 18.

[12] *Id*. at 17.

[13] Sprint Letter at 1.

[14] *See, e.g.*, T-Mobile PN Comments at 23-24; T-Mobile PN Replies at 16-17; Comments of Mobile Future, WT Docket No. 16-421, at 4-5 (filed Mar. 8, 2017); Competitive Carriers Association ("CCA") Comments, WT Docket No. 16-421, at 11 (filed Mar. 8, 2017); Mobilitie PN Comments at 19-21; Verizon PN Comments at 3, 26-27; Crown Castle PN Comments at 37-38; ExteNet PN Comments at 19, 36-39; Comments of Crown Castle International

the structure already holds an antenna) than for construction of new structures is consistent with the Commission's findings in adopting the original shot clocks, which set 90-day and 150-day time periods for collocations and for new structures, respectively. There, the Commission found that a reasonable period under Section 332(c)(7)(B) should be significantly shorter when a new structure did not need to be built. It noted that the principal basis for distinguishing collocations from new structures was that collocations "do not implicate the effects upon the community that may result from new construction. In particular, the addition of an antenna to an existing tower or other structure is unlikely to have a significant visual impact on the community."[15] This finding applies to all existing structures regardless of whether they already hold an antenna.[16]

Taking this action is consistent with many states' recent efforts to speed wireless deployment by setting deadlines for localities to act on siting applications for small cell collocations and support structures associated with collocations. Eleven states—Delaware, Florida, Indiana, Kansas, Missouri, North Carolina, Rhode Island, Tennessee, Texas, Utah, and Virginia—recently adopted small cell legislation that includes 45-day or 60-day shot clocks for small cell collocations.[17] Some recently enacted state legislation likewise includes shot clocks for

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Corp., WT Docket No. 17-79, at 29 (filed June 15, 2017) ("Crown Castle Comments"); Conterra Broadband Services, Southern Light, and Uniti Group Comments, WT Docket No. 17-79, at 21 (filed June 15, 2017).

[15] *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review*, Declaratory Ruling, 24 FCC Rcd 13994 ¶ 46 (2009), *aff'd sub nom. City of Arlington v. FCC*, 668 F.3d 229 (5th Cir. 2012), *aff'd*, 133 S. Ct. 1863 (2013) ("*2009 Order*").

[16] *Id*.

[17] *See* 17 DEL. C. § 1609(b)(4) (requiring review of collocation of small wireless facility within 60 days); FLA. STAT. ANN. § 337.401(7)(d)(8) (requiring review of collocations within 60 days of receipt of a complete application); IND. CODE ANN. § 8-1-32.3-26(a)(5) (requiring review of construction, placement, or use of a small cell facility within 60 days of receipt of a complete application); K.S.A. § 66-2019(g) (requiring review within 60 days of submission of an application for up to 25 small cell facilities of a substantially similar design within the jurisdiction of a single authority); R.S.MO. § 67.5113(3)(8), (4) (requiring review of collocations of small wireless facilities within 45 days of receipt of an application, and 60 days if the application is considered by the Missouri department of transportation); N.C. GEN. STAT. § 160A-400.54(d)(4) (requiring review of a small cell facility collocation within 45 days of when the application is deemed complete); R.I. GEN. LAWS § 39-32-4(b) (requiring review of a small wireless facility collocation within 60 days of submission of the application); TENN. CODE ANN. § 13-24-409(b)(5) (requiring review of a small wireless facility within 60 days of receipt of the application); TEXAS LOCAL GOVERNMENT Code § 254.154(d) (requiring review of a network node within 60 days of receipt of a complete application); UTAH

small cell facilities on new structures that are less than or equal to 90 days.[18] As discussed in the record, a number of local jurisdictions have also enacted laws and ordinances that prescribe deadlines for application reviews that are shorter than the Commission's current requirements.[19] Further, although larger macro facilities are still being constructed, the shift toward small cell deployments has simplified local reviews, freeing up resources so that localities can reduce processing times on *all* facilities. These facts confirm that the 60- and 90-day timeframes CTIA proposes are reasonable.

Adopting a 60-day period for collocations on or modifications of existing support structures will also harmonize this period with the 60-day period that currently applies to certain modifications that meet the requirements of Section 6409(a) of the 2012 Spectrum Act and Section 1.40001 of the Commission's Rules. A single shot clock for all collocations and modifications will simplify the process, which in turn will help speed deployment. Moreover, there is no reason to

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CODE ANN. § 54-21-302(6)(a) (requiring review of a small wireless facility collocation within 60 days of receipt of a complete application); Va. Code § 15.2-2316.4(B)(1) (requiring applications for small cell facility collocations to be reviewed within 60 days of receipt of the complete application). References to enacted state small cell legislation herein do not address any provisions regarding potential tolling or extensions of time which may be contained therein.

[18] *See, e.g.*, 17 DEL. C. § 1609(b)(4) (requiring the Delaware Department of Transportation to review applications for installations and modifications of utility poles or wireless support structures within 60 days); H.B. 2651, 29th Leg., Reg. Sess. § 6(9) (Haw. 2018) (requiring review of applications for installations, replacements or modifications of utility poles associated with small wireless facilities within 90 days from receipt of the application); IND. CODE ANN. § 8-1-32.3-26(a)(5) (requiring review of applications for the construction, placement, or use of a small cell facility's associated supporting structure within 60 days from receipt of a complete application); R.S.Mo. § 67.5113(3)(8) (requiring review of applications for installation of new, modified, or replacement utility poles associated with small wireless facilities within 60 days of receipt of the application); 11 OKL. ST. § 36-504(D)(7) (requiring that applications to install a new, modified or replacement utility pole associated with a small wireless facility be processed within 75 days from receipt of the application).

[19] Reply Comments of CCA, WT Docket 16-421, at 8 (filed Apr. 7, 2017) (noting that localities in Ohio, Texas, Kentucky, and North Carolina have processed collocation applications in 30 days or less, and a Kentucky jurisdiction has a maximum time of 60 days to act on new facility siting requests); Comments of T-Mobile USA, Inc., WT Docket No. 17-79, WC Docket No. 17-84, at 19-20 (filed June 15, 2017) ("T-Mobile Comments") (noting that Kentucky, Michigan, Minnesota, New Hampshire and Wisconsin previously adopted 45-day or 60-day deadlines).

apply different time periods (60 vs. 90 days) to what is essentially the same review: modification of an existing structure to accommodate new equipment.[20]

The Supreme Court has affirmed the Commission's authority to require that localities act on applications "within a reasonable period of time," as required by Section 332(c)(7), and to determine what the period of time is.[21] Similarly, the Commission may modify what it determines is a reasonable time based on a supporting factual record. That record clearly exists here.[22] Moreover, these timelines should not be extended for batch applications, because the record shows that there is no need for extended processing times when several sites are included in a single application.[23] In fact, grouping sites on the same application can streamline review because the same general information about the provider need only be provided once.

The Shot Clocks Should Encompass All Required Review Procedures. For the shot clocks to achieve their purpose, the Commission should also clarify *when they begin to run*.[24] The

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[20] *See, e.g.*, T-Mobile Comments at 22 ("[D]istinctions among different types and sizes of facilities and sites would make the siting process needlessly more complex without any proven benefits."). As T-Mobile noted, "following the adoption of a 60-day shot clock for certain eligible collocations covered by Section 6409(a), there was significant confusion regarding when a collocation fell under the new 60-day period or the standard 90-day collocation shot clock." *Id*.

[21] *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review*, Declaratory Ruling, 24 FCC Rcd 13994 (2009), *aff'd sub nom. City of Arlington v. FCC*, 668 F.3d 229 (5th Cir. 2012), *aff'd*, 133 S. Ct. 1863 (2013).

[22] CTIA Comments at 36; Verizon Comments at 38-39; ExteNet Reply Comments, WT Docket No. 17-79, at 10-11 (filed July 17, 2017); Comments of CCA, WT Docket No. 17-79, at 8-10 (filed June 15, 2017).

[23] *See* T-Mobile PN Replies at 17; Crown Castle PN Comments at 37-38; Sprint Comments, WT Docket No. 16-421, at 41-44 (filed Mar. 8, 2018); Verizon PN Comments at 27 (explaining that the Commission should follow the lead of states that have adopted small facility statutes that apply the same shot clock to batch applications that applies to single applications); Crown Castle Comments at 30.

[24] The Commission has raised this precise concern: whether it should "provide further guidance to address situations in which it is not clear when the shot clocks should start running, or in which States and localities on the one hand, and industry on the other, disagree on when the time for processing an application began." *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment,* Notice of Proposed Rulemaking and Notice of Inquiry, 32 FCC Rcd 3320 ¶ 20 (2017).

processing delays discussed above are exacerbated by a loophole in the shot clocks—specifically, the practice of some localities of imposing "pre-review" procedures and requirements *before* they will accept applications for permits to build facilities at specific sites.[25] These can be mandates that providers demonstrate their capabilities or long-term deployment plans, or that providers enter into "master licensing agreements" ("MLAs") or franchise agreements, as a prerequisite to being able to file individual site applications.[26] They can also be mandates that providers obtain multiple, sometimes sequential, approvals from different local agencies.[27] Localities then assert that the shot clocks apply only to the period *after* a provider files a complete permit application. Thus, if there are pre-filing procedures or other requirements the provider must comply with, these localities do not consider the shot clocks to apply to those procedures, resulting in long delays.[28] For example:

- A Maryland city required a provider to enter into a franchise agreement imposing terms and conditions governing its access to poles in rights-of-way, and took the position that the shot clocks were not triggered prior to adopting the franchise agreement and any related changes to local ordinances.[29]

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[25] T-Mobile PN Comments at 6; T-Mobile PN Replies at 7; Mobilitie PN Comments at 14-15; Verizon PN Comments at 7; Crown Castle PN Comments at 21 (explaining that cities may request modifications to locations based on departmental or community feedback, and in other cases, refuse to accept applications or declare applications incomplete with no reasonable basis); Comments of AT&T, WT Docket No. 16-421, at 25 (filed Mar. 8, 2017).

[26] *See, e.g.*, T-Mobile PN Comments at 6 (stating that MLAs also often include a number of unfavorable provisions or conditions); T-Mobile PN Replies at 17; Mobilitie PN Comments (explaining that MLAs are "typically extensive contracts, often thirty pages or more, which impose detailed obligations and restrictions"); Verizon PN Comments at 8 (stating that it is not uncommon for MLAs to take a year or more to negotiate).

[27] *See, e.g.*, Letter from Keith Buell, Sprint, to Marlene H. Dortch, FCC, WT Docket No. 17-79, at 3 (filed June 18, 2018) (noting delays from multiple permitting procedures; "the Commission's shot clocks should include everything a local government requires for actual construction to begin").

[28] *See, e.g.*, Crown Castle Comments at 29; T-Mobile PN Replies at 17; Verizon PN Comments at 30-31; Reply Comments of Verizon, WT Docket No. 16-421, at 2 (filed Apr. 7, 2017); Mobilitie PN Comments at 19-20.

[29] Crown Castle Letter at 9.

- Many New York jurisdictions bifurcate siting reviews among different agencies, such as the local planning board and local zoning board, and impose multi-stage or sequential administrative processes that far exceed the shot clock periods.[30]
- A California city has imposed lengthy pre-application processes requiring tasks such as notification to nearby households or a public meeting, which the cities have contended do not trigger the shot clock.[31]
- Many jurisdictions have required MLAs, which can take years to negotiate; in one midwestern community, it took more than three years to reach an MLA and the suburb subsequently refused to grant permits for accessing city-owned poles.[32]
- In one Wisconsin city, an infrastructure provider was required to participate in a "pilot program" under which it had to provide drawings for specific locations, which the city then reviewed for more than one and a half years.[33]

Localities imposing these requirements take the position that the shot clocks do not begin to run until the provider submits its individual site application. Their position, however, undermines the shot clocks' objective—to accelerate deployment by defining what constitutes a reasonable time for localities to act. Instead, cities engage in drawn-out negotiations of such agreements, and consider the shot clocks to begin to run only after those are executed and the provider then files a permit application.

The Commission can remove this barrier to deployment by ruling that all such required procedures, including application review, must be completed within the time periods set by the shot clocks. In other words, where a locality requires multiple steps for reviewing a siting request, the shot clocks should apply to all steps together.

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[30] AT&T Letter at 2.

[31] Crown Castle PN Comments at 21; T-Mobile PN Replies at 7.

[32] Verizon PN Comments at 8; T-Mobile PN Replies at 7.

[33] Crown Castle PN Comments at 19.

There is, however, no need for this ruling to encompass voluntary discussions with a locality. Indeed, it may often prove efficient for a provider to meet with local officials to brief them on deployment plans and gain input from those officials prior to filing an application. This consensual give-and-take can speed action on individual permit applications, because the locality will be familiar with the provider's equipment design and planned locations or will have worked through any concerns it may have as to design or locations with the provider. Although such discretionary conversations may help speed deployment, the shot clocks should nevertheless not apply to such voluntary, cooperative pre-application discussions. They should, however, apply when the locality unilaterally imposes pre-application requirements and reviews.

The Commission Should Adopt an Enforceable Remedy for Shot Clock Violations. As CTIA and many other parties have demonstrated, the Commission has the authority to interpret Section 332 of the Communications Act to provide that, where an application is not acted on by the end of the shot clock period, the application is deemed granted.[34] Moreover, this remedy is essential to achieving both the purpose of that provision and the Commission's policy objectives.

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Pursuant to Section 1.1206(a) of the Commission's rules, a copy of this letter is being electronically submitted into the record of these proceedings. Please do not hesitate to contact the undersigned with any questions.

Sincerely,

/s/ Scott K. Bergmann

Scott K. Bergmann
Senior Vice President, Regulatory Affairs

[34] *See, e.g.,* Letter from Scott K. Bergmann, CTIA, to Marlene H. Dortch, FCC, WT Docket No. 17-79, WC Docket No. 17-84, WT Docket No. 16-421 (filed June 20, 2018); Letter from Tamara Preiss, Verizon, to Marlene H. Dortch, FCC, WT Docket No. 17-79 (filed July 26, 2018).